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ABSTRACT

Title IX, the 1972 United States federal law forbidding sex discrimination in education, has a rarely-talked-about but surprisingly tenuous history which illustrates how discourses of equality come to mean political powerlessness for diverse girls and women in school. Unfortunately, "sexual" debates such as women's sports and sexual harassment often overshadow discussion of gendered curriculum and the classroom. These debates also illustrate a pattern of discourse that neutralizes women's differences, whether innate or learned, in an equality model over which they have no control without first considering the effects women's differences will have on their ability to achieve equitably. Even after tracing 26 years of Title IX, it does not take much time or effort to discover that educators, even feminists, are not doing enough for girls in their classrooms, that schools of education are not teaching educators how to recognize, appreciate, and teach in increasingly, not decreasingly, diverse classrooms, that school systems spend more energy and resources on avoiding controversy than on imagining better ways to do schooling. What will take time, effort, and commitment is demanding change. (Contains a figure of a time line of selected civil rights law changes affecting females in education, and 42 references.) (BT)

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Title IX and Educational Equity:

What Difference Does It Make?

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Abstract

Title IX, the U.S. federal law forbidding sex discrimination in education since 1972, has a rarely-talked-about but surprisingly tenuous history which illustrates how discourses of equality come to mean political powerlessness for diverse girls and women in school. Unfortunately, "sexy" debates such as women's sports and sexual harassment often overshadow discussion of gendered curriculum and classroom. These "sexy" debates also illustrate a pattern of discourse that neutralizes women's differences, whether innate or learned, in an equality model over which they have no control without first considering the effects women's differences will have on their ability to achieve equitably.

key words: education, feminism, gender equity, Title IX

Title IX and Educational Equity: What Difference Does It Make?

Regarding the education of girls and women in the United States, Title IX of the 1972 Education Amendments to the 1964 Civil Rights Act has been the great hope of women's rights advocates for a over a quarter century, a period long enough to see another generation of students graduated into adulthood. At its word, Title IX forbids discrimination in education on the basis of sex. But as the "report card" by the National Coalition of Women and Girls in Education (1997) documents, "Title IX at 25" still leaves "much room for improvement" in access to higher education, athletics, career education, employment, learning environment, math and science, sexual harassment, standardized testing, and treatment of pregnant and parenting students.

What often is left out of reverent nods toward Title IX is its tenuous legislative, administrative, and judicial history. Because I think we too much take Title IX for granted, this essay explores some pivotal moments in Title IX's history for clues to its impact on the education of girls and women. To an important extent, the discourses of equality that Title IX emerged from and continues to be embedded in have prevented it from making a difference in education by failing to validate the differences that girls and women make in the classroom. Specifically, I am arguing that the feminist agenda for educational reform should be using a multicultural model that recognizes and celebrates diversity among students, especially among girls and women, instead of an equality model that assumes all students only need to be offered equitable entree into the system in order to achieve a narrow definition of educational excellence.

The opposition between working for political equality under the law and proposing differences which undercut the foundations of the law highlights a familiar paradox for feminists. Elizabeth Grosz calls this "the debate between so-called feminisms of equality and feminisms of difference" (1994, p. 83). "The project of sexual equality," she observes, has "a number of serious drawbacks" (p. 89). It unquestioningly assumes "male achievements, values, and standards as the norm to which women should also aspire" (p. 89). Among other things this fails to account for the very real differences we ascribe to women's bodies. Thus maternity issues--affecting both educators and students--largely remain women's private problems to be dealt with outside the

public realm of policy. Women's athletics, one of the places Title IX has been most effective and problematic, further underscores the troubled relationship between equality and the sexed body. "Equality" also does not recognize the effects of family, gender socialization, and learned roles, as well as their cultural variations, which teach girls different sets of lessons at home as well as at school and work.

Furthermore, Grosz notes that laws and policies ostensibly guaranteeing women's equality sometimes work harder for men than for women. In 1982, an early Title IX Supreme Court decision--Mississippi University for Women v. Hogan--ruled in favor of Hogan, a male who successfully sued for entry into Mississippi University's all-female nursing program. The court reasoned that barring men from nursing was bad for women because it perpetuated gender stereotypes about nursing as women's work. In other words, only male nurses could elevate nursing to a status worthy of equality.

More recently, in the wake of the Virginia Military Institute in 1996 losing its case barring female cadets, the National Organization of Women and the New York Civil Rights Coalition are pursuing action against an all-girls' school in New York. The Young Women's Leadership School, an East Harlem middle-school program modeled on research showing adolescent girls perform better in single-sex classrooms, especially in math and science, is attempting equality through accommodation of differences by providing African-American girls with focused instruction. NOW's charge is sex discrimination against boys, but NOW President Patricia Ireland does have a method to this apparent madness. She claims sex-segregated schools, even those clearly benefiting girls, benefit boys more because single-sex education historically has provided boys more advantages than girls. Responding to Ireland's position, Susan Estrich, University of Southern California Law Center, commented, "This is a presumption of bad faith by men who make the rules, tempered only by vigilance to absolute neutrality" when it comes to gender (1997).

Instances such as these illustrate Grosz's (1994) observation that women can only be equal to men if women's oppressions are erased and only if the universal called man equally can be

oppressed. As many feminists have noted, "gender neutral" always subsumes the female because it always assumes the universal is male. Mankind includes womankind, but not vice versa. But I want to propose that we also can understand neutrality as a dangerous kind of politics that neuters feminist activism under an illusion of equality, a highly ambiguous concept to begin with.

"The right to equality entails the right to be the same as men," while the right to difference means "the right to...reject the terms by which equality is measured and to define oneself in different terms" (Grosz, 1994, p. 91). A politics of difference, sometimes called "strategic essentialism," questions the very possibility of women's--or any subordinate group's--equality in a social system whose norm is always an unimpoverished able-bodied white heterosexual man. Granted there are harsh critiques of strategic essentialism, too. These range from being so impracticably and idealistically theoretical as to encourage political apathy--to being so bound to women's bodies as to reinforce representations of women as essentially the "weak sex"--to being too much another meta-narrative that the perpetuates the same kind of homogenizing universal it tries to dismantle.

But Grosz (1994) argues we shouldn't be paralyzed into inaction as we wait breathlessly for a "pure," uncontaminated theory. We are inescapably implicated in an androcentric system of logic, knowledge, power, and social structure. However, that shouldn't stop us from making political commitments and choosing tactics to improve the lives of our daughters.

As a more effective variation on white feminisms' themes on difference, Chela Sandoval (1991) has suggested "differential feminism" as both theory and method. Sandoval uses "differential," a tactical shifting of ideological gears for survival across contexts, to explain the experiences of what she has labeled "U.S. third world women" who daily negotiate multiple memberships in categories like race, class, and gender while these categories neither represent women of color nor allow women of color to represent themselves. Differential feminism, as an "oppositional consciousness" to dominant and dominating forms of power, embraces temporary political coalitions and positions, grounded in the particular rather than the universal, without subsuming individuals' differences. The "differential" gives us permission to shift conceptual

frameworks--what detractors may call contradicting ourselves--as we move from one issue to the next. What I think is most difficult but absolutely critical for women to recognize is that "equality" is not a stable ideal. It is highly flexible, meaning different things to different people within different contexts across race, class, sexual orientation, and gender. What constitutes social justice in one East Harlem school today, may not always and everywhere for everyone.

"Difference" affords us a perspective for explaining the almost always disadvantaged experiences of girls and women in school, across their differences. "Differential" provides us with a tactical tool for transforming these experiences without assimilating differences.

In the rest of this essay I examine Title IX, first within the context of education reform during the Civil Rights Movement, and then as a set of assumptions with a complex history of legislative law, judicial interpretation, and administrative policy. Finally, I will discuss two specific cases in Title IX's history where equality came to mean political powerlessness for girls and women: losing the Association of Intercollegiate Athletics for Women (AIAW) to the National Collegiate Athletic Association (NCAA) and losing the "reasonable woman" standard for determining sexual harassment to the U.S. Supreme Court's preference for a "reasonable person" standard.

The Civil Rights Movement: Legislating Difference

Title IX is best understood within a constellation of legislated "differences," although with varying intents and results, emerging from the Civil Rights Movement of the 1960s and 1970s. Race, ethnicity, religion, sex, and national origin were first granted protection against discrimination by the law in the 1964 Civil Rights Act and reassured equal protection under the law in the 1968 Equal Protection Clause of the 14th Amendment. Also in 1968, students whose first language was not English became the target of special education funding under the Bilingual Education Act. During the same period the federal government began to direct unprecedented amounts of funds into education and public welfare. In 1972, women became protected against discrimination under Title IX within the context of education. Citizens' protection against discrimination based on disability and then age followed closely behind in the 1973 Rehabilitation

Act and the 1975 Age Discrimination Act, respectively. Also in 1975, children with "handicaps" were granted equal opportunity to education. In 1976, the Vocational Education Equity Act prohibited sex discrimination in vocational education. By 1978 even gifted and talented children had their own education act.

The 1980s under the Reagan administration saw a newly conservative reaction against the previous two decades' liberalism and a defunding of many programs targeting so-called minority groups in education. Then the shift to a Republican Congress coupled with a Democratic administration haunted by scandal effectively shut down any progressive initiatives thus far in the 1990s, although President Clinton along with a number of Democratic senators and representatives actively have pursued gender equity legislative reforms and policies (Brennan, 1995; Grant & Curtis, 1993; Klein & Ortman, 1994; Shoop & Hayhow, 1994; Valentin, 1997). (Figure 1 provides a short timeline of some relevant changes in the law since the Supreme Court's 1954 ruling in Brown v. the Board of Education).

These early changes and the differing effects they intended, all in the name of equality, warrant consideration. Not all differences are equal under the law. Mainly the laws fall into two groups: those intended to erase difference and those intended to mark it. Put another way, there were "negative directive" laws and "positive entitlement" laws (Salomone, 1986). In the end, women's differences and differences of sexual orientation fell into neither group. Sex and gender differences would become a "neutral," meaning ambiguously aligned, difference. And given the difficulty schools have discussing sexuality, we are only now beginning to address issues of sexual orientation, differences which have been thoroughly invisible within the context of education.

Initially, race, ethnicity, national origin, sex, and age discrimination legislation was designed to provide access to public life by barring unfair exclusions. In the '60s and '70s Johnson's "great society" learned that it "may not discriminate" based on these differences. Forbidding discrimination in an attempt to reverse social injustice, the law--at its word--forbade us to discern difference. We didn't learn to examine the underlying assumptions that historically prompted us not only to see some differences while not others but also to attach negative values

to some differences while not others. Instead we learned that we had to ignore these differences altogether. This blind eye to difference, John Rawls' (1971) "veil of ignorance" as social justice, made affirmative action all the more contradictory and galling to heretofore sacrosanct arenas of white male privilege. At the same time it urged everyone else to aspire toward the educational and economic privilege afforded white manhood.

In a society prohibited from recognizing these differences, the group with the political and economic advantages continued as the default standard toward which now undifferentiated peoples supposedly were to work. Had we begun with the proposition that difference makes a difference, we much earlier might have understood for example that white people do not represent lack of race or the difference that doesn't count. White people are people of color whose color makes the biggest difference. At the same time our affirmative action enforcing policies defied the legal injunction to ignore difference by telling us, literally, to count difference.

The other group of differences, language and exceptionality, required recognition and accommodation in the otherwise blind eyes of the law. Now, for example, individuals with disabilities, whom we had historically tried to hide from the gaze of public life, were to be ushered into the mainstream with the help of specially targeted benefits and services. Equal opportunity meant a recognition of different but equally valid need and a financial commitment to provide special assistance.

During the same period, the fear that all these newly marked and unmarked students showing up in white schools would "dumb down" the classroom necessitated special consideration for the very brightest children--almost always white and middle-class--who had to be encouraged to excel in school if the United States were to compete in an increasingly competitive but interrelated global economy. The unspoken assumption that educators knew who the gifted and talented children were (or at least could see who they weren't) fundamentally characterized the national commitment to equality, especially colorblind equality, as more political concession than democratic ideal. Equality became something beneath those with a birth-right to extra privileges.

With so many specially funded programs to administer and so many new groups of students whose differences needed to be either ignored or accommodated, the mainstream classroom gave way to "tracking" students into "special" courses of learning, a perversely segregated form of schooling in the era that had just mandated desegregation. Largely based on "scientifically objective" testing, using the white middle-class male as the norm, tracking students began to look suspiciously discriminatory based on class, race, disability, and sex. Then, once the whole structure was codified by law and practice, Reaganomics tossed the burden of funding back to individual states.

What happened to all the girls in this story is a good question. For the most part, after Title IX, school girls disappeared from mainstream consciousness and the public agenda. Since public schools were already coed in 1972, and since Title IX's original purpose addressed higher education, girls slipped back into obscurity under the assumption that equality between the sexes--at least in public school--was a done deal.

Public memory recalls that the women's movement nearly coincided with the Civil Rights Movement. And in fact, second-wave feminists modeled some of their political strategy after NAACP successes (Salomone, 1986). But Rosemary Salomone points out that the race analogy only went so far for women because the United States' "deeply entrenched paternalistic attitude toward women" could not escape its history of law designed to "protect" women of delicate breeding from the trauma of public life, including education (1986, pp.114-115). Of course, women of color and poor working women were never included as those who needed protection. The black civil rights movement was as much the black man's movement as the women's movement was almost exclusively the white, middle-class woman's movement. In fact, Virginia Representative Howard Smith, chair of the House Rules Committee, added "sex" to the 1964 Civil Rights Act on the last day of the bill's debate believing the idea of women's employment equality would kill the legislation altogether. But the Act, including the word "sex," actually passed on the argument that granting blacks equal employment opportunity would give African-American women an unfair employment advantage over white women (Lindgren & Taub,

1998). The result had to opposite effect. Crenshaw (1990) summarizes employment discrimination cases in which black female plaintiffs, suing for employment discrimination, lost their suits because the courts reasoned black women, due to their race, could not statistically represent all women and sue employers under sex discrimination. In other instances, the judges ruled black women, due to their sex, could not statistically represent all blacks and sue for race discrimination. Regardless of the scientific soundness of probability theory's logic, the material effect left plaintiffs without legal protection or recourse. Women of color too often slip between the cracks of equality theory and practice.

Race and class have always divided U.S. women as a group. Still, it is important to note that when they are considered together as a "class," women, the only minority to comprise half the U.S. population, never fully benefited from Civil Rights litigation and legislation. ERA, "which had languished in Washington since 1923" (Salomone, 1994, p. 123), came very close to the necessary 38 states' ratification in 1977 until it became a victim of conservative backlash and died in Congress in 1982. Unlike some categories of people, "women" never have been afforded full consideration under the law. Many eagerly point out that this is in no small part because significant numbers of women, from radical feminists to ultra conservatives, share a deep suspicion of the gender-neutral society, albeit not for the same reasons. Meanwhile it is a subtle irony that "neutrality" became the term we applied only to the "minority" called women, and only in public life. While gender neutrality in public life exists more as theory than practice, in private life not even the theory goes home in the book-bag or brief-case at the end of the day, as Hochschild (1990) has documented in her description of the gendered division of domestic labor and Pipher (1995), in her analysis of adolescent girls and their families.

In the equality model, if women could comprise a class similar to race, then theirs was a difference which needed to be ignored in terms of citizens' rights. On the other hand, if women's equality depended on their exceptionality, then their differences needed to be recognized and accommodated. I easily could argue that our conceptualization of women's equality came to be based on a hybrid of both. We unmarked our daughters' differences in instances such as second

period math and fifth period shop where we encouraged their participation and remediation toward the boys' level of achievement, and we marked their differences in others such as third period P.E. where we continued to separate the sexes by curricula and achievement benchmarks. However, as an officially unrecognized class, women, unlike other groups, actually constituted an altogether different category, which I will characterize as neutral differences, visible yet completely ordinary, naturalized, and mystified. In the public political arena, we could not ignore women's gendered differences without threatening heterosexuality and the family, but we could not accommodate these differences without somehow reinforcing women's subordinate status. So women's differences remained neutral, not engaged, a site of political disengagement. Mirroring the general public's ambivalence, law-makers and judges all-too-consistently have hesitated to take controversial stands on women's issues (Rhode, 1989; Salomone, 1986).

As a category, women is theoretically troublesome. Our differences defy attempts at containment, yet they continue to be anchored to historically contingent, contradictory, and unstable constructions of womanhood. As Diane Elam argues, "'women' is a permanently contested site of meaning" (1994). Gender neutrality effectively masks our inability to deal with women's differences from man as well as among women, and it makes women dangerously complacent.

Title IX: Assuming It Makes a Difference

Women's differences haven't been the only ambiguity related to Title IX, whose language states in deceptively simple terms: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied benefits of or be subjected to discrimination under any education program or activity receiving Federal financial assistance." But in the years since its adoption, Title IX's wording has been nearly its own undoing as institutions, agencies, and courts have struggled to pin down the meaning of "program and activity receiving Federal financial assistance."

Title IX began in 1972 as legislation designed to provide women access to and opportunity in higher education, although its broader application to public education became

immediately apparent. But, as is normal process in American law, the courts would clarify interpretations of the law's intent, and federal agencies would write the law's policies and enforcement procedures. This meant that Title IX's potential for social change depended on a series of assumptions.

First, investing Title IX with the power to improve education for girls and women assumed that Congress could legislate social change. Second, it assumed that the courts' selection of a few cases to rule on would adequately clarify the law and that a few narrowed rulings could be generalized appropriately to a broad array of specific educational contexts. And third, it assumed that government agencies charged with administering the law would somehow correctly interpret judicially clarified legislation, effectively translate that law into policy, and then actively enforce that policy--if provided, of course, enough budget to adequately fund the entire project. Based on such a complexly interrelated series of assumptions, Title IX has never been simply a federal mandate for educational equality, however equality came to be defined.

Following Title IX's passage as part of the Education Amendments to the Civil Rights Act of 1972, The Women's Educational Equity Act (WEEA) passed in 1974 as part of the Elementary and Secondary Education Act and in conjunction with the Equal Education Opportunities Act. While Title IX was a "negative directive" against discrimination, WEEA was to have been a "positive entitlement" providing support services for combating sex bias in education from preschool to post-secondary (Salomone, 1986). But even though Congress has consistently reauthorized WEEA over the years, WEEA has never been fully funded under its mandate and has come perilously close to being under-funded into oblivion more than once.

Also in 1974, once the Department of Health, Education and Welfare (HEW) had issued its first set of Title IX regulations, Congress amended Title IX to exclude social and service organizations for youth, which exempted groups such as sororities and fraternities, scouting, and the YMCA/YWCA from charges of sex discrimination (Salomone, 1986). In 1976, Congress issued more exclusions, including among other things beauty pageant scholarships (Salomone, 1986), although the 1976 Educational Amendments specified eliminating sex discrimination, bias,

and stereotyping with regard to education. "These postenactments to Title IX were symptomatic of a small but persistent movement within Congress to limit the law's coverage" (Salomone, 1986, p. 125).

In response, civil rights, education and women's groups formed the Education Task Force to lobby Congress for Title IX's final approval, implementation and enforcement, and President Ford finally signed off on the regulations in 1975. But enforcing Title IX almost immediately became a slow, ineffective bureaucracy among the Justice Department, HEW, the Equal Opportunity Commission, and the Department of Education. Over the years, few complaints were settled, while the backlog of cases grew.

Not surprisingly, then, since the administrative process was moving so slowly, the first Title IX law suits began to show up in court in the late 1970s (Salomone, 1986). But it wasn't until 1979, in Cannon v. University of Chicago, that the Supreme Court ruled that individuals, in addition to the federal government, could sue under Title IX. Even then this ruling was limited because lower courts held that plaintiffs could not sue on discriminatory effect alone; they had to prove the nearly-impossible-to-prove discriminatory intent as well.

By this time, Title IX advocates and opponents began to debate the law's "intent" versus its "spirit," which had serious implications for its application in schools (Salomone, 1986). WEEA's 1980 Congressional reauthorization encouraged Title IX's enforcement in letter and spirit (Salomone, 1986). But by then nearly everyone with an interest had realized that it would be the courts that would settle the question. At issue was the meaning of "education program or activity receiving Federal financial assistance." Women's rights advocates pushed for the broadest possible interpretation, hoping that any institution receiving any federal monies would be accountable. More conservative parties, as well as most schools, hoped for a more narrow definition limited to specific programs and specific activities receiving specific federal monies.

Also at issue was who constituted a beneficiary of a federal program or activity receiving federal assistance. In other words, whom did the law cover?--students only or employees,

too--even though Title VII of the 1964 Civil Rights Act already protected employees of educational institutions from sex discrimination.

In 1982, in North Haven v. Bell (Terrel Bell, then secretary of Education), the Supreme Court decided Title IX covered school employees as well as students, but the court's stance on "program or activity receiving Federal financial assistance" was too open-ended to settle the question with any finality. Still, the Justice Department concluded that the North Haven case had limited Title IX's meaning to the narrower understanding of federally assisted program or activity (Salomone, 1986).

Then in 1984, the Supreme Court, in deciding Grove City College v. Bell, effectively reversed Title IX. Earlier in 1983, with the Grove City College case pending, Title IX supporters, including a bi-partisan group from Congress, rallied to file friend-of-the-court briefs and request an opportunity to make arguments before the court, which was denied. The House of Representatives went to so far as to take a non-binding vote in support of Title IX, which resulted in 414 in support and only 8 against (Salomone, 1986). At the same time, both the federal government represented by Secretary Bell and Grove City College approached the case with the narrower "program or activity" interpretation of Title IX, which the Supreme Court adopted. The court's final 1984 ruling so narrowed Title IX's application that the Office of Civil Rights and the Department of Education immediately closed, suspended, or limited all but the most blatant cases of all forms of discrimination, thus reducing its severe back-log (Salomone, 1986).

Although WEEA was amended that year with a new focus on girls and women at risk for multiple forms of discrimination, Senator Edward Kennedy and Representative Paul Simon were unsuccessful at persuading Congress to re-legislate Title IX. It wasn't until 1988 under the Civil Rights Restoration Act that Congress restored Title IX to its original institutional spirit covering any educational institution getting any federal assistance. But by that time the Reagan administration had begun federal "defunding" of education. Ironically, in the Reagan administration's block grant approach to school funding, some private schools began to receive federal monies in 1985, at the same moment when many women's programs' budgets suffered

devastating budget cuts. This meant private schools, if recipients of federal funds, for the first time ever became subject to Title IX's negative directive against sex discrimination (Salomone, 1986).

It wasn't until 1992 that plaintiffs could sue for monetary damages under Title IX, which meant costly litigation without compensation in the intervening 20 years. This in turn meant attorneys, until that time, were hesitant to take on such cases. In 1996, Congress eliminated federal funds to states for Title IX programs. But 1996 was also the year that WEEA, having been reauthorized again in 1988, but still embarrassingly underfunded, finally received adequate budget to continue operations, which was renewed again in 1997, the same year that Title IX turned 25.

Athletics and Sexual Harassment: Neutralizing the Threat of Difference

This brief and somewhat over-simplified chain of obscure events in Title IX's history shows how tenuous its existence has been. As well, the implicit notion that Title IX refers only to equal "access" to educational programs and activities has further limited its effectiveness. Suggesting changes beyond equal access, and in some cases even suggesting equal access, "goes to the heart of our cultural stereotypes regarding the proper roles of women and men" (Sharp, p.24, 1993). This is especially evident in school athletics, for example, where Title IX has provided girls with greater-than-ever opportunities to participate in sports' physical, social, and psychological benefits while gross inequities between the sexes continue in terms of funding and participation rates.

It took the specter of sexual harassment, hardly recognized before Anita Hill testified against Clarence Thomas in 1991, to refocus at least some public attention back on school girls. While men and many women have had trouble believing sexual harassment between adults is a practice offensive enough to be outlawed, sexual harassment of school children could be framed in the frightening terms of pedophilia and child molestation. The courts have yet to clarify whether or not they will recognize sexual harassment between student peers, the most common and persistent form of sexual harassment at school. The message of court opinions to date indicates

that student-to-student harassment "is just a fact of life that should be tolerated and not regulated or eradicated through the judicial system" (National Coalition for Women and Girls in Education, p.32, 1997). Most recently, the Supreme Court is considering its first case of student-to-student harassment in Davis v. Monroe County Board of Education, and is expected to issue a decision on whether Title IX protects students from student harassment sometime in 1999.

Meanwhile, we continued to overlook the gendering of general classroom dynamics and the hidden curriculum in favor of the more overt horror of sexual abuse, even as Myra and David Sadker and the American Association of University Women published their widely cited research on girls' unfair and often hostile treatment in schools in "How Schools Shortchange Girls" (AAUW, 1992), "Hostile Hallways" (AAUW, 1993), and Failing at Fairness (Sadker & Sadker, 1994). While these studies have been called "landmark," many of their findings substantiated the results of earlier work published in the '70s and '80s. The irony is not only that we all along have had a rich but untapped source of knowledge on school girls, but also that so little has changed after two and a half decades.

In this section I want to look briefly at a couple of key moments in Title IX's history first with regard to athletics and then to sexual harassment, before moving on to share some final thoughts. Both sports and sexual harassment have been high-profile gender equity school issues, and so they also have been and continue to be highly contentious--which in itself is interesting since neither sports nor sexual harassment per se are strictly education issues. These two sites also are interesting because the debates they represent always lead back to the sexed body and privileging the male experience at the expense of the female. Specifically, I want to look at the National Collegiate Athletic Association's assimilation of the Association for Intercollegiate Athletics for Women and also at the Supreme Court's assimilation of the "reasonable woman" standard into a "reasonable person."

In 1974, Texas Senator John Tower tried to introduce legislation exempting sports programs that produced school revenues from Title IX, which was what finally induced HEW to issue its Title IX regulations that year (Salomone, 1986). The NCAA lobbied vigorously against

Title IX's passage fearing that college sports would be finished if schools were forced to redirect resources toward women's programs (Henderson, Bialeschski, Shaw, & Freysinger, 1996). Early Title IX court cases tended to rule both in favor of developing girls' sports programs and against female participation in some male sports programs based on the rather unscientific assumption of girls' physical "inferiority" to boys (Fischer, Schimmel, & Kelly, 1995).

At the same time, the AIAW, the women-run organization governing women's college sports, also had serious concerns about Title IX. The AIAW justifiably feared losing its authority and autonomy if steam-rolled by the "male club." It also feared women's sports would be negatively changed by the male sports model of "crass commercialism," "corruption," and a "win-at-all-costs" competitive ethic (Henderson et al, 1996).

As women's sports participation saw its most dramatic increases ever during the 1970s, the AIAW's worst fears came true. The NCAA reversed its position on Title IX. The formerly threatened men's organization began to see immense financial potential through media exposure, not to mention a growing job market for coaching positions, if it were to embrace women's sports into its organization. So the NCAA began a new campaign to drive the AIAW out of business, which it succeeded in doing by 1982 (Henderson et al, 1996).

In 1971, women coached 90 percent of women's college teams; by the 1995-96 school year that percentage had dropped to 47.7, while women have made no measurable gains in coaching men's teams (National Coalition for Women and Girls in Education, 1997). At the same time, funding for women's programs, distribution of sports scholarships, and average scholarship amounts continue to favor men's programs and male athletes at alarmingly disproportionate rates (National Coalition for Women and Girls in Education, 1997).

Even worse, the Office of Civil Rights has never actively enforced Title IX compliance in women's athletics, even though "(g)laring inequities between women's and men's school sports are common--and illegal" (Sharp, p.24, 1993). Some suggest few schools anywhere are in full compliance with the law (Sharp, 1993). And still, as recently as 1995, Congress has heard public arguments that "Title IX has gone 'too far' and has 'hurt' men's sports" (National Coalition of

Women and Girls in Education, p.13, 1997). Additionally, many educators' open hostility to diverting any school funds to sports programs tends to shift attention and energy away from improving women's programs.

On the other hand, Donna Lopiano, Ph.D. and executive director of the Women's Sports Foundation, actively argues that girls need to be learning the beneficial lessons of the competitive sports model, including self-esteem, teamwork, and risk-taking, all directly applicable to the United States' career model (Lopiano, 1996). Unlike boys who see the direct connection between youth sports and adult success, research shows that white girls do not equate sports participation with adult performance; and African-American girls, who do make the connection between sports and adult success, make it under the false assumption that race and class will not undermine their opportunities in other ways (Henderson et al, 1996). Lopiano has been one of the few to frame Title IX's gender equity sports discourse within concrete educational terms.

On the other hand, opponents argue that Title IX compliance is impossible because girls and women simply aren't interested in sports in great enough numbers. But this doesn't account for socialization, which teaches many girls to give up organized sport not just because of a discomfort with conflict or because of a preoccupation with fitness emphasizing beauty over competition. Girls recognize real temporal, physical, social, psychological, and financial barriers, experienced at school, home, and work, against sports participation (Henderson et al, 1996).

The very idea of taking women's athletics seriously has been somehow as humorous when measured against dominant ideals of femininity as it has been threatening to dominant ideals of masculinity. Powerful cultural norms that make women's participation in sports like gymnastics, skating, and diving both aesthetically pleasing and highly erotic also make women's participation in more aggressive team sports taboo; nice women do not sweat, engage in bodily contact, aggressively face-off, wear heavy equipment, or flaunt their strength and stamina (Daddario, 1992). Sport "links maleness with the positively sanctioned use of aggression/force/violence" (Bryson, 1987, in Trujillo, 1994). A revised sports model that teaches girls and women to internalize knowledge that their bodies are powerful not only makes them less likely to become

victims of violence, but also undermines the assumption of male physical superiority that teaches boys and men that women can be victimized (Nelson, 1991, 1994). "If muscles make a man manly, what do they make a woman?" (Pellegrini, 1997).

The question to ask is what are we teaching girls and women that keeps them from participating, and what are we doing to encourage their full participation on their own self-determined terms at all levels of our institutions. Trading the AIAW for the NCAA points to a typical pattern of assimilating girls' experiential differences into a male model over which they have no control without first considering the effects those differences will have on girls' ability to achieve equitably.

A similar argument applies to sexual harassment, affecting school girls at higher rates than boys. Sexual harassment inflicts greater emotional damage on girls than on boys and negatively affects school performance (American Association of University Women, 1993). So the question becomes who has the power to define what constitutes sexual harassment.

In 1986, the Supreme Court, in Meritor Savings Bank v. Vinson, allowed that a hostile work environment comprised sexual harassment and was protected under Title VII's prohibition against sex discrimination in the work place. This would become a model for charging sexual harassment as sex discrimination under Title IX at school. Then the Civil Rights Act of 1991 amended Title VII to allow employee plaintiffs to collect punitive and compensatory damages. That same year two lower courts handed down truly stunning rulings on sexual harassment.

Both in Ellison v. Brady and in Robinson v. Jacksonville Shipyards, the courts allowed the standard of a "reasonable woman," which acknowledged that a "reasonable woman" might construe sexual harassment where a reasonable man in the same situation might not. Privileging a woman's experience over a man's was unprecedented. This meant that a woman could charge she was being sexually harassed, and be taken seriously, based on a uniquely woman-defined standard of offensive behavior in a culture which generally not only ignores but also condones the objectification of women's bodies as sex objects. What made these court opinions even more

breath-taking was that they occurred the same year that public opinion, including a high percentage of women, crucified Anita Hill's Congressional testimony and her motives.

Then in 1992, in Franklin v. Gwinnett County Public Schools, the Supreme Court recognized that students who claim they are sexually harassed by school personnel have a right not only to seek an injunction to stop sex discrimination under Title IX but also to seek monetary damages.

But the next year the Supreme Court's ruling on Harris v. Forklift Systems seemed to short-circuit the "reasonable woman" standard. The high court indicated that it would prefer a gender-neutral "reasonable person" standard in gauging evidence of sexual harassment (telephone communication, Oct. 1997: National Women's Law Center, Washington D.C.; National Association of Women and the Law, New York). Furthermore, the court used a two-part standard in which sexual harassment must be both objectively evidenced as well as subjectively perceived; the conduct in question had to be more than "offensive," although it didn't have to be so severe as to cause "tangible psychological injury" (Fischer et al, 1995). Justice Clarence Thomas remained noticeably "silent during arguments" (Reuters, Oct. 13, 1993).

The "reasonable woman" standard remains an important moment in women's rights advocacy, and we may yet see her resurrected. But the Supreme Court's hinted preference for a "reasonable person" over a "reasonable woman" stands for the moment. That sexual harassment, a euphemism for physical and psychological violence against women, cannot be recognized unless it is gender neutral speaks volumes about the consequences of gender neutrality for girls and women. Further complicating things, the courts are facing a new twist on sexual harassment with same-sex harassment cases now making their way through the system. Same-sex sexual harassment points to the original weak ideological link that put sexual harassment under sex discrimination law's jurisdiction in the first place. If Civil Rights law forbids discerning differences based on sex or gender, then by definition women's experiences of sexual harassment, as either hostile environment or quid pro quo, cannot be fully recognized. Meanwhile same-sex

sexual harassment steps altogether outside the notion of discrimination based on gendered sex as equivalent to sexuality, but that is another essay.

Title IX has had beneficial influences on both women's sports and sexual harassment in school. But it seems fairly evident that these two highly sexualized issues have garnered public attention precisely because they "make gender trouble" (Butler, 1990), which in turn has been systematically restabilized by neutering girls' and women's differences as soon as they threaten the heterosexual male hierarchy of power. At the same time, these two issues have in some regards successfully created a public diversion away from the institutional structures and practices of a dual-gender educational system which teaches girls lessons of silence, invisibility, inferiority, victimization, and powerlessness--all disguised as gender neutrality.

Conclusion: Make a Difference

A number of education scholars have pointed out that our solutions for making schooling more gender equitable always have more to do with "fixing girls" than with "fixing education," and with being antisexist rather than "girl-friendly" or "girl-centered" (Stromquist, 1995), although we clearly do not have a problem with boy-friendly and boy-centered schooling. We talk more about being "sex fair" than "sex affirmative" (Klein & Ortman, 1994). We tend to worry about how we can change girls' priorities rather than changing institutional priorities, and more about promoting remediation for girls than about promoting remediation for education as well as an appreciation for diversity among all students and teachers (Rhode, 1989).

A hundred years ago educators noticed that boys' academic performance improved with girls in the classroom; that girls' performance declined when there were boys was not an issue, which is exactly why girls grudgingly were allowed in public schools in the first place (Rury, 1991; Spender, 1982). Today we continue to debate the virtues of single-sex education, yet we still have no long- or short-term systematic studies, let alone data that account for other variables such as race, class, ethnicity, socio-economic status. Instead we ask all girls, regardless of their differences, to adapt to a standard of development historically based on white, middle-class boys (Gilligan, 1982).

Since 1972, we have tried to purge school books and curricula of overt sexism, and we have added some publicly recognized women and African-Americans to a few history units, rather than integrate the heritage and contributions, both public and private, of all students' cultures into the everyday classroom, which would enrich the learning environment for everyone. We have tried to get girls more interested in math, science, vocational education, computers and technology skills through special programs and pedagogy without examining the other psychological and social factors that put some girls at risk for rejecting these traditionally male-dominated spheres of knowledge production and equivalent career tracks. We typically have targeted middle and high schools with gender equity programs, where such programs exist at all, instead of elementary schools where gendered communication patterns become codified and where children learn masculine styles are both privileged and socially unacceptable for girls. We're discovering that despite our well-intended attempts at what we thought was gender neutrality in the classroom, we unconsciously continue to teach in a style that allows boys to speak more often and for longer periods of time, and we punish girls who behave themselves by giving them less attention; we demand higher levels of scholarship from boys but higher levels of helpfulness and submission to authority from girls; we require girls to follow classroom rules that we don't enforce for boys (Sadker & Sadker, 1994). Still, we know amazingly little about the classroom experiences of other groups such as Native American, African-American, Latina, and Asian-American girls. And we let sports and sexual harassment dominate the girls' education agenda at the expense of these other pressing issues.

Most recently, a new sex-based education alarm is ringing through the media: women now represent roughly 60 percent of college students, a sign that gender equity has become reverse discrimination (Klein, 1999; Koerner, 1999; Leo, 1999), although these accounts conveniently omit discussion of sex-segregated programs like engineering, still dominated by men, and education and nursing, still dominated by women.

In sum, our theory of gender equity neutralizes differences, between boys and girls, and among girls, in an attempt to assimilate girls' educational disadvantages into boys' educational opportunities.

Even after 26 years of Title IX, it doesn't take much time or effort to discover that educators, even feminists, are not doing enough for girls in their classrooms; that schools of education are not teaching educators how to recognize, appreciate, and teach in increasingly, not decreasingly, diverse classrooms; that school systems spend more energy and resources on avoiding controversy than on imagining better ways to do schooling. What will take time, effort, and commitment is demanding change.

For a real education on how much we know but haven't acted on when it comes to the schooling of girls and women, walk over to the gender equity section in the education stacks of your campus library. Crack some nearly new spines on all those dusty volumes. Get your hands on the American Association of University Women's research on school girls.

Next, call your local public school district headquarters to learn about your system's multicultural and gender issues, policies, and initiatives. Don't be surprised if it takes some time to locate anyone who knows what you're talking about or if the public official you finally end up with becomes either a) very defensive or b) excited and grateful to connect with someone else who actually cares. Get involved; do some little helpful thing; pass on a bibliography. Find out if your state has gender equity in education legislation; find out how it's being enforced. (Florida, where I live, quietly enacted the Florida Education Equity Act in 1993.)

Talk to some school girls, maybe even your own daughters, about their education experiences. Ask them about math, science, sports. Ask them about their attitudes toward boys; ask them about boys' attitudes toward girls. Ask them what they are learning. Brace yourself.

If you have children, talk to your PTA, principal, head of guidance, teachers about gender policies and initiatives in school. Brace yourself.

Then locate the feminists in your campus' teacher training program; ask them how undergraduate education majors are trained in diversity and gender issues. Join their gender and

schooling interest or research group. Start one if there isn't such a thing. (See Rosselli, Raffaele, Taylor, & Daniel, 1998.) Strive for a diverse group mindful of race and class issues. As a group, invite speakers to campus. Take on a community project. Do some action research or intervention. Apply for grants. Look for opportunities to speak to other local groups about what you've learned.

Submit concise, persuasively argued commentary to the local press.

The next voice you hear may be the differential engaging to make a difference.

Figure 1:
Timeline of Selected Civil Rights Law Changes Affecting Girls and Women in Education

1954 U.S. Supreme Court: Brown v. Board of Education
Makes racially segregated schools illegal.

1963 Equal Pay Act
Requires equal pay for equal work, regardless of sex.

1964 Civil Rights Act
Forbids discrimination based on race, color, religion, sex, or national origin. "Sex" was added only as an unsuccessful attempt to block the bill's passage.

1965 Elementary and Secondary Education Act
Begins massive infusion of federal funds into public schools.

1968 14th Amendment: Equal Protection Clause
Reasserts citizens' rights to equal protection under the law.

Bilingual Education Act
Funds pilot programs targeting English-as-second-language students.

1972 Title VII of Civil Rights Act
Amended to cover schools and public employers.

Title IX of Educational Amendments of Civil Rights Act
Forbids sex discrimination in education "programs or activities" receiving federal funds.

1973 Rehabilitation Act
Forbids discrimination based on disability.

1974 Women's Educational Equity Act
Establishes "WEEA" to combat sex bias in education.

1975 Age Discrimination Act
Forbids discrimination based on age.

Education for all Handicapped Children Act
Requires public education to accommodate handicapped children.

1976 Vocational Education Equity Act
Forbids discrimination in vocational education.

Education Amendments
Legislates elimination of sex discrimination, bias, and stereotyping in education.

1978 Title VII
Pregnancy discrimination at work is Title VII discrimination.

WEEA
Is reauthorized.

1979 U.S. Supreme Court: Cannon v. University of Chicago
Individuals, in addition to government, now can sue under Title IX.

1980 "New" WEEA
Encourages Title IX enforcement.

1982 U.S. Supreme Court: North Haven v. Bell
Title IX covers school employees in addition to students.

Equal Rights Amendment
ERA, specifying equal rights for women, dies in Congress.

1984 U.S. Supreme Court: Grove City College v. Bell
In effect, reverses Title IX.

"Newest" WEEA
WEEA is reauthorized emphasizing educational equity for girls and women at risk for multiple forms of discrimination.

Carl D. Perkins Vocational Act
Funds vocational training for girls and women.

1986 U.S. Supreme Court: Meritor Savings Bank v. Vinson
Employees can sue for sexual harassment as sex discrimination under Title VII of the Civil Rights Act ("hostile environment").

1988 Civil Rights Restoration Act
Restores Title IX to cover any educational program or activity receiving any federal assistance.

WEEA
WEEA is reauthorized.

1990 Disabilities Act
Updates Rehabilitation Act.

1991 Civil Rights Act
Amends Title VII to allow plaintiffs to collect damages (has sexual harassment implications) and reinstates protections threatened by Supreme Court rulings.

lower courts: Ellison v. Brady; Robinson v. Jacksonville Shipyards
Courts accept "reasonable woman" standard in sexual harassment cases; a "reasonable woman" may construe harassment where a "reasonable man" may not.

1992 U.S. Supreme Court: Franklin v. Gwinnett Co. Schools
Under Title IX, students claiming sexual harassment (from school employees) may seek damages. (Student-to-student harassment still is not covered.)

1993 U.S. Supreme Court: Harris v. Forklift Systems
Court indicates it would prefer a "reasonable person" standard in sexual harassment cases.

1996 Title IX
Congress eliminates state funds for Title IX.

WEEA
Congress funds to continue operations.

1999 U.S. Supreme Court: Davis v. Monroe County Board of Education
Decision pending on whether or not a student may sue another student for sexual harassment under Title IX's protections.

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